DOCUMENT RESUME

ED 168 121 EA 011 387

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TITLE Search and Seizure in the Schools. A Legal Memorandum.
INSTITUTION National Association of Secondary School Principals, Reston, Va.
PUB DATE Feb 79
NOTE 9p.
AVAILABLE FROM National Association of Secondary School Principals, 1904 Association Drive, Reston, Virginia 22091 ($0.50; quantity discounts)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Court Litigation; *Due Process; School Policy; School Responsibility; Search and Seizure; Secondary Education; *Student Rights; *Student School Relationship

ABSTRACT

Based on past court litigation, this publication summarizes students' rights concerning search and seizure, exceptions to these rights, and the legal effects of violating these rights. Administrative recommendations are made. (MLF)

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A Legal Memorandum

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February 1979

SEARCH AND SEIZURE IN THE SCHOOLS

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With the 1960s came increased recognition of student constitutional rights, and student searches and confiscation of student property suddenly became the subject of considerable legal debate. Prior to that time it was assumed that these activities of school administrators, like so many others, were merely prerogatives accorded them under the doctrine of *in loco parentis*.

What are the student's rights concerning search and seizure? What exceptions, if any, apply? And what are the legal effects of violating those rights? These are a few of the questions explored in this Memorandum. Some of them cannot be answered with certainty, either because they have not been clearly addressed by the courts or because conflicts exist between jurisdictions. But, perhaps the general pattern will help in dealing with these issues.

The Fourth Amendment

Adopted in 1791 as part of the original Bill of Rights, the Fourth Amendment sought to assure citizens that their persons and their homes would not be invaded by governmental officials without just cause. It provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched and the persons or things seized.

Originally, the Fourth Amendment protection against unreasonable searches and seizures applied only to actions taken by the federal government, but has since been applied to action taken on behalf of the states through the Due Process Clause of the Fourteenth Amendment.

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Because the Bill of Rights was intended to protect citizens against abuse of government power, only those searches conducted by government officials are subject to its guarantee. Further, not all searches and seizures are prohibited, but only those which are "unreasonable". The U. S. Supreme Court has now made clear that, for the most part, only those searches which are conducted pursuant to a valid, judge-approved search warrant are presumed to be "reasonable". Searches conducted outside the judicial process, without prior approval by a judge or magistrate, are assumed to be unreasonable. *Katz v. United States*, 389 U.S. 347 (1967).

In the *Katz* decision, however, the Court did note that there are circumstances which permit exceptions to be made to this rule; in these situations a search could be reasonable, and therefore constitutional, even if conducted without a valid warrant. Most of these exceptions concern criminal investigations that preclude obtaining a warrant, such as when a police officer is in "hot pursuit" of a fleeing felon; or when a search is made "incident" to a valid arrest and there is a reasonable possibility that evidence of the suspected crime would be destroyed if not immediately seized.

This exception to the warrant requirement might also apply, however, in the school context, as in the case of drugs suspected to be hidden on the person of a student. In such cases, the alternative of securing a warrant might require detention of the student in an administrator's office for an extended period of time. Such detention might reasonably be regarded as more of an interference with the student's rights than would the search, so the warrantless search would be allowed.

Another recognized exception to the requirement of a warrant which might apply in connection with school searches is the so-called "plain view" doctrine often relied upon in police searches of automobiles. Under this doctrine, materials such as weapons which are or might be illegal to possess, and which are visible through the car windows, may be seized by proper authority.

Finally, as a general matter, it is well to bear in mind that the Fourth Amendment's strictures against unreasonable searches and seizures were developed as part of the criminal law, and even in school cases it is a criminal action which has usually given rise to questions concerning the reasonableness of a search or seizure. The U.S. Supreme Court specifically indicated this in its discussion of the Fourth Amendment in *Ingraham v. Wright*, 430 U.S. 651 (1977) Footnote 42 p. 673. The issue in most school cases involving search or seizure, therefore, becomes whether the evidence discovered will be admissible in evidence in the criminal prosecution of the student searched. It has not been an issue of whether the administrator who made the search is liable in some way for having made the search. This is an important aspect of the law of search and seizure which should be kept in mind from the outset.

Even when the circumstances have not fallen squarely within the exceptions to the requirement of obtaining a search warrant, both state and federal courts have generally upheld searches conducted by school officials without a warrant, and the admissibility of evidence from such searches in both criminal and juvenile proceedings. But the courts have shown much less of a consensus as to why the usual requirements of Fourth Amendment protections were not mandated, or were applied in a different manner in the school context. Because some of the reasons given have been changing in recent years, it is important to know what they are.

Who Conducted the Search?

Administrators Acting Alone

The most common reason for treating school searches differently from others has been the simple recognition by the courts that school teachers and administrators are not officers of the law, and that it was against the abuse of power by the latter that the Fourth Amendment was intended to be protective. Often, this distinction has been based upon the convenient notion of *in loco parentis* as in the landmark New York case of *People v. Jackson*, 319 N.Y.S. 2d 731 (App. Div. 1971) aff'd 333 N.Y.S. 2d 167, 30 N.Y. 2d 734 (Ct. of App. 1972).

The case arose when a high school discipline coordinator received information that a student was in possession of narcotics. The coordinator asked the student to come to his office, and noticed a bulge in the student's pocket. When the student suddenly ran from the school, the coordinator gave chase and caught the student with the assistance of a police officer, some three blocks from the school. A hypodermic needle, an eyedropper, and other narcotic implements were found on the student, and confiscated.

After his arrest, the student sought to have the seized items excluded from evidence against him on the ground that the search was unreasonable. The court, however, upheld the search even though it took place off of school property. In explanation, the court said:

> ...a school teacher, to a limited extent at least, stands *in loco parentis* to pupils under his charge and may exercise such powers of control, restraint, and correction over them as may be reasonably necessary to enable him properly to perform his duties as a teacher and accomplish the purpose of education.

Despite diminished reliance on the *in loco parentis* doctrine in many other kinds of school cases in recent years, it continues to be cited by courts in search and seizure cases. In California, for example, an appellate court wrote that, even though "...the Constitution imposes a limit on [school authorities'] power, the doctrine of *in loco parentis* expands their authority.... [It] gives the school authorities the power and responsibility of parents and at times, this power and responsibility will conflict with the rules set forth under the Fourth Amendment." The court then held that the search of a student's locker was constitutionally reasonable after five students had told an assistant principal that marijuana was hidden there. *In re W.*, 105 Cal. Reptr. 775 (1972).

As in the New York case, the California court noted that school officials are not free to search students or their lockers without some factual basis, but it would appear that the usual constitutional standard required to support a search by police or other law enforcement officers has been reduced from that of "probable cause" to something much less. This was the approach taken by the Delaware Superior Court. *State v. Bacino*, 282 A. 2d 869 (1970). This has been the approach taken by courts particularly where drugs have been involved. A New Jersey decision put it this way:

> ...privacy rights of public school students must give way to the overriding governmental interests in investigating reasonable suspicions of illegal drug use by...students even though there is an admitted incursion into constitutionally protected rights. *In re G.C.*, 290 A. 2d 102, N.J. Super. Ct. (1972).

In *People v. Jackson*, supra, the court carefully noted that not all searches by school officials would be regarded as constitutionally proper. Only those searches conducted when, "the school official has a reasonable suspicion that illegal materials may be found on the person of the juvenile charged are legal." In such cases, the court added, school authorities not only have the right, but also an obligation, to investigate. This is true, the court reasoned, because of the direct relationship between school personnel and their students, and further, because parents have a right to expect that the school will maintain certain safeguards to protect their children from "harmful and dangerous influences."

One problem in this approach has been the definition of the reduced "reasonable suspicion" standard. In *In re W* the court defined it as, "enough information to start a police investigation." However, other courts have found acceptable just about any information relating to illegal activity from almost any source. In both the California and New York cases cited above, student tips were regarded as sufficient, and in the New Jersey case (*In re G.C.*) an anonymous telephone call was regarded as justifiable grounds upon which to base the search.

Some courts have gone further than mere reliance upon the *in loco parentis* doctrine as a basis for distinguishing searches by public school administrators from those of law enforcement officers. Instead, they have made an initial determination that school officials conducting searches on school property are not acting as governmental officials at all, and consequently the Fourth Amendment to the Constitution is not applicable. *In re Donaldson*, 75 Cal. Reptr. 220 (1969) is probably the best-known case of this kind. While there are a number of others which have never been overruled, this position seems to be losing favor of recent years. (See cases in The Law of Procedure in Student Suspensions and Expulsions, NOLPE, Robert Phay, p. 37.)

A recent Georgia case takes yet another tack in distinguishing school searches conducted by administrators from those of police. After reviewing the various search and seizure cases involving school administrators, the Supreme Court of Georgia in *State v. Young*, 216 S.E. 2d 586 (1975), accepted as a fact that public school administrators are government officials. Because they are not law enforcement officials, however, and because the student might therefore seek redress in some other way, the court held that the exclusionary rule under which the evidence of an unlawful search is inadmissible did not apply to school searches.

Where Law Enforcement Officers Are Involved

Whatever the basis for treating administrator searches, the distinction may disappear if police or other law enforcement authorities are involved. Such cases will often be treated as police searches, and the higher standards applied. (See, for example, *People v. Stewart*, 313 N.Y.S. 2d 253 [1970].) On the other hand, in a case where two vice-principals called a police officer to assist in the search of a student, the evidence was held to be inadmissible. The basic elements determinative of the outcome seem to be who initiated the search and whether the administrator acted alone or in cooperation with law enforcement officials.

The most recent case in which these issues were considered arose in Illinois. On the basis of a telephone tip, the principal called police concerning three 13-year-old girls suspected of possessing illegal drugs. After the girls were forced to submit to a strip search by the school nurse and female psychologist, the police arrived. No drugs were found and the girls sued both the school officials and the police for violation of their civil rights. Despite strong statutory language concerning the *in loco parentis* powers of educators in Illinois, the court held that the school personnel were not immune from liability because of their status. Especially, as in this case, where they worked with the police to conduct a search which is at least partly in the nature of a criminal investigation, the higher standards applicable to law enforcement officers would be applied. *Picha v. Wielgos*, 410 F. Supp. 1214, N.D. Ill. (1967).

The purpose of the search may also be the basis for determining what standard should be applied. In one of the few cases which has reached the federal appellate level, *Piazzola v. Watkins*, 442 F. 2d 284, 5th Circ. (1971), the court reversed the convictions of two college students for possession of marijuana discovered in their dormitory room by police. The court stated that, despite the obvious need for broad supervisory powers to be vested in the university, it could not be construed to authorize school officials to consent to a warrantless search "for the primary purpose of a criminal prosecution."

What Place Was Searched?

Lockers

Another basis for determining the legality of school-related searches has been the place searched. Until quite recently, most courts have relied on this distinction to uphold searches of student lockers. Typically, the courts have excepted such searches from the protection of the Fourth Amendment entirely. The basis for this exception was the contention that the locker belongs to the school, and is only provided to the student for limited purposes. The student's use of the locker is therefore exclusive only with regard to other students, but not to the official representatives of the school. These representatives have a right, and perhaps even a duty, to inspect a student's locker at any time and for any reason. *Kansas v. Stein*, 456 P 2d 1, (1969).

This was also the view of the court in *People v. Overton*, 229 N.E. 596 (1967), reaff'd 249 N.E. 2d 366 (1969). Here the New York Court of Appeals seemed particularly impressed by the fact that the school officials had a master key to the lockers, and maintained that the school had therefore never surrendered all of its interest and control of the lockers to the students to whom they were assigned.

A third theory applied in some locker search cases is that of consent. Even a warrantless search by a police officer may be valid if a person consents to it. Some schools have sought to make use of this doctrine by having all students sign a form acknowledging the right of school officials to conduct locker searches whenever they deem them necessary. The problem with this approach is that such consents may not be regarded as voluntary if, in fact, the student is required to sign or the assignment of a locker is made dependent upon signing the form.

Even without such consent forms, however, most courts would uphold general locker searches for such administrative purposes as cleanliness, finding missing library books, and the like. In such cases, however, the use of illegal materials discovered in the search as evidence in an individual criminal prosecution would probably not be allowed. This was the view of the U.S. Supreme Court in a non-school decision which held that city inspectors required warrants in order to enter homes pursuant to enforcing the housing codes. *Camara v. Municipal Court*, 387 U.S. 523 (1967).

Personal Searches

While the Supreme Court itself has stated that the Fourth Amendment is to protect "people, not places" (*Katz v. U.S.*, page 1) the courts have tended to be more stringent in applying its protections to searches of a student's person than of his locker. This seems only natural inasmuch as a personal search involves a much greater interference with privacy, and it is basically an individual's privacy which the Fourth Amendment is intended to protect. Nevertheless, most courts have

applied the lower standard of "reasonable suspicion" rather than "probable cause" to personal searches in the school setting, especially where such dangerous threats to the school as weapons or drugs have been involved.

Recently, however, a new element has come to the surface in school search litigation, and it arises most often in cases involving search of the person. That is a demand for money damages for violation of constitutional rights. This was the situation in the Illinois case involving the strip search of three female students described earlier in *Picha v. Wielgos*. Unlike most school search cases in which the student is the defendant in a criminal prosecution or similar juvenile proceeding, the students here were the plaintiffs, suing the administrators for damages under Section 1983 of Title 42, the civil rights act so often a basis of civil suits arising out of suspensions. While the court's ruling was complicated by the involvement of police in the search, and no actual damages were awarded, its finding that school administrators could be held liable for such damages suggests that particular caution must now be exercised, especially in personal searches of this kind.

Automobiles

Very little litigation has concerned the search of automobiles by school authorities, but there has been a large amount involving police. The guiding principle in these cases appears to be the degree to which the defendant, against whom evidence is sought to be introduced, had a reasonable expectation of privacy in his automobile. This expectation, according to the Supreme Court, is significantly less than that relating to one's home or office. *Cardwell v. Lewis*, 417 U.S. 583 (1974). And it may be less in some circumstances than in others. Where marijuana was recovered pursuant to a routine inventory of the contents of a car which had been impounded by police for multiple parking violations, the Supreme Court ruled that the material could be introduced in evidence for prosecution of a drug possession charge because there was no suggestion that the motive of the search was investigatory. *South Dakota v. Opperman*, 428 U.S. 364 (1976). And finally in a decision just announced, the Supreme Court upheld the validity of an auto search where the property belonged to a passenger rather than the driver, the distinction again being based on the presumably reduced degree of the passenger's expectation of privacy. *Rakas v. Illinois*, S.C. Docket No. 77-3781, decided 12/6/78.

Despite the stated rationale of these cases, however, it appears that the leniency shown by the courts to police searches of automobiles may be based as much on the circumstances as upon any more sophisticated theory. The key factor appears to be whether the material suspected to be concealed in an automobile will not remain within the jurisdiction and authority of law enforcement officers long enough to await the securing of a warrant. It would seem likely that this factor would have some weight in cases involving the search by school officials of automobiles located on school property as well. This was certainly the attitude of the court in one of the few reported cases involving a school search of an automobile. Drugs and alcohol were found in the automobile of a student at the Marine Maritime Academy and the student was expelled. Seeking readmission, the student challenged the admissibility of the evidence, which had been secured without a warrant. Finding reasonable cause to believe that school regulations were being violated by the student, the court allowed the evidence to be admitted. *Keene V. Rogers*, 316 F. Supp. 217 D. Me. (1970).

What Was the Nature of the Proceeding?

The *Keene* case raises one additional question that may be of importance, but which has received relatively little attention by the courts. That is whether a school disciplinary proceeding should be treated in the same way as a criminal prosecution with regard to the admissibility of evidence secured through a search. This issue was raised in the *Piazzola* case (see page 5 above), which involved the administrative search of a student's dormitory room by school authorities at a public college. Drugs discovered in the search were held to be inadmissible evidence in a criminal prosecution, but the same court permitted the introduction of the evidence two years earlier in a college disciplinary proceeding that resulted in the suspension of the same student. *Moore v. Student Affairs Committee of Troy University*, 284 F. Supp. 725 D. Ala. (1968).

Conclusions

As indicated at the beginning of this Memorandum the legal issues surrounding search and seizure in the school context have not been fully resolved to date. Certain conclusions seem feasible, however, as being the emerging consensus of most courts. Perhaps these conclusions can best be illustrated by analyzing a recent federal district court case which presented most of the issues. The case involved a fifth grade class in which one student claimed that $3.00 was missing from his coat pocket. When no one would confess to having the missing money, the teacher conducted a search of the outer garments of all of the students, and when that turned up nothing, had the children taken to the appropriate lavatories where they were required to submit to a strip search. The money was never found, and some of the parents sued for damages under the Civil Rights Act of 1876 for interference with the Fourth Amendment rights of their children. Before reaching a final determination, the court ruled on a number of the issues discussed in this Memorandum.

1. The Fourth Amendment was properly invoked because the action of the public school teachers was state action. Action by law enforcement officers was not necessary to reach such a conclusion.

2. Because the search was carried out by educational personnel, the standard required to uphold a valid search is lower than the "reasonable cause" required of law enforcement officers.

3. The reasonableness of a search of public school students in terms of the Fourth Amendment requires a balancing of the individual's rights against those of the larger society, taking into account all of the circumstances.

   In making this determination, these factors are to be considered:

   a. The duties and responsibilities of the school officials;
   b. The purpose of the search;
   c. The students' ages and conduct records;
   d. The seriousness of the problem; and
   e. The necessity of conducting a warrantless search.

4. School officials possess qualified good faith immunity to personal liability for damages with respect to their official duties if not made in ignorance or disregard of settled constitutional law. (This was the standard set by the U.S. Supreme Court in the case of *Wood v. Strickland* in 1974. See Legal Memorandum June 1975.)

Even though the court concluded that the search of all the students was not reasonable, no damages were awarded. No evidence of intentional disregard of the students' constitutional rights was shown, and the state of those rights is sufficiently unclear with regard to search and seizure that the school officials could not reasonably be held accountable for ignorance of it. *Bellnier v. Lund*, 438 F. Supp. 47 N.D., N.Y. (1977).

Recommendations

Based on the above conclusions some administrative recommendations can be made:

1. Warrantless searches should be conducted only upon the basis of reasonable suspicion that the student is concealing something, possession of which is either in violation of the law or of school rules. Normally, this suspicion should be specific to the student being searched.

2. Voluntary disclosure of the suspected property, or consent to make the search, should be sought before commencing an involuntary search. Consent is only meaningful in court if it is elicited without coercion or threat.

3. The basis for suspicion sufficient to be "reasonable" increases in direct proportion to the amount of interference with privacy of the student(s) involved. The justification for a strip search of the person must be far greater than that required for search of a school locker.

4. The danger presented by the property being sought, the student's age and record of conduct, and the urgency of making the search without delay are all circumstances bearing on its reasonableness.

5. The primary purpose and justification should be the protection of the health, safety, and welfare of students, faculty, school property, and the educational process. Arrest and prosecution for violation of criminal law should only be a subsidiary result of any warrantless search.

In the present state of the law, adherence to these principles should result in evidence which is admissible in school disciplinary proceedings and any criminal prosecution or juvenile court proceeding which might result from its surrender to law enforcement authorities. Hopefully, following these rules will also demonstrate a sufficient attempt to respect the Fourth Amendment rights of students as to protect principals and other administrators against the threat of civil rights suits.

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A Legal Memorandum is a publication of the National Association of Secondary School Principals, 1904 Association Dr., Reston, Va. 22091. Annual subscription rate of $2 is included in the dues of NASSP. Additional copies may be ordered: single copies, 30 cents each; 2-10 copies, 40 cents each; 11-99 copies, 35 cents each; 100 or more copies, 30 cents each.

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